

Date Mailed April 10, 2001

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Investigation Into Ameritech Wisconsin's Unbundled
Network Elements

6720-TI-161

AMENDMENT OF SECOND CONFIDENTIALITY DETERMINATION

On December 15, 2000, Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin (Ameritech) sought confidential treatment of information filed with the Commission under control numbers 00876, 00877, 00878, 00879, 00883, 01422, 01421, 01420, 01419, 01418, and 01417.

On January 5, 2001, staff, pursuant to Wis. Admin Code § PSC 2.06, asked for additional information concerning specified portions of the materials submitted under the above control numbers. Ameritech initially failed to respond to staff's interrogatory. As a result, on February 13, 2001, an order was issued that denied confidential status to those portions of the information about which the interrogatory inquired per Wis. Adm. Code § PSC 2.06(4)(b), (Second Determination).

On March 13, 2001, Ameritech contacted the Commission identifying that the interrogatory appeared to make the distinction between estimates and actual Ameritech data, but the way the Second Determination was written would release actual information to the detriment of Ameritech that could benefit competitors. On March 26, 2001, an order granting an extension of time to answer the interrogatory was issued (Extension Order). The Extension Order provided ten days from the date of issuance for Ameritech to respond and delayed the public release for

20 days from the date of issuance. Ameritech responded on April 3, 2001, as will be further discussed below.

The information for which Ameritech seeks confidential status includes numerous cost studies and related information including disks containing operating cost models. This same type of information was also evaluated in a February 21, 2001, determination of confidentiality (Third Determination). That order was issued based on reviewing the filing without any additional interrogatories.

The interrogatory included the following question:

...Except for the identification of vendors, information from vendor contracts, Ameritech specific labor rates, Ameritech specific plant indexes, Ameritech specific distance measurements and Ameritech specific usage data not available in other public reports, how would the inputs to the cost studies aid a competitor? For example, how would estimates of fill factors, capital costs, time intervals, probability of occurrence, proportions of manual processing, installation factors, maintenance factors, structure factors, weightings and overhead loadings aid a competitor?

Ameritech's April 3, 2001, reply provided the following information answering this question. It explained that fill factors, installation factors, maintenance factors and structure factors are not estimates at all, but are calculated based on actual data in Ameritech's internal systems. It further explained that time intervals, probabilities of occurrence, proportions of manual processing and weightings used in the cost studies are not subjective estimates, but instead are based on Ameritech's actual experience in performing these activities and analysis of the times and probabilities it will face going forward. Ameritech explains that the inputs to its model were based on internal information from subject matter experts in the relevant fields based on years of experience by individuals who actually perform these activities and not on publicly available information or speculation. For the overhead loadings, while it starts with publicly

available Automated Reporting Management Information System (ARMIS) investment and expense data, Ameritech subject matter experts then assign the accounting information to more detailed categories. Ameritech explained that the inputs in question represent non-public Ameritech specific cost data (a category granted confidential status in the Third Determination) based on the experience and expertise of experts in the relevant fields.

Ameritech further clarified that although some of the figures contained in Ameritech's cost studies appear to be round numbers (e.g. 120 minute activity times or 50 percent occurrence probability), this does not mean these figures are estimates or are inaccurate, nor are the figures based on subjective information. The fact that the time or frequency values are expressed in whole or round numbers in Ameritech's opinion does not diminish their competitive significance.

The response explained how Ameritech believes public disclosure of this information would aid a competitor. It explained that competitors would be able to determine staffing and resource allocation requirements by taking advantage of years of Ameritech's experience, rather than through their own experience, effectively helping competitors develop their business plans. This type of information would assist a competitor in deciding whether to enter a specific sector of the local telecommunications market, by providing information about the cost of doing business and thus whether a competitor would be able to earn a profit if it enters a particular sector of the market. The overhead loading figures, if disclosed, would provide valuable intelligence concerning Ameritech's cost structure and would allow competitors to determine whether it could be competitive with Ameritech for particular services or markets.

Ameritech further explained that it has spent considerable time and expense developing this data and represents something of significant value to Ameritech. Competitors could avoid significant expenditures associated with developing cost models if this information is publicly disclosed. Ameritech takes significant steps to protect the information. The information is only disclosed to persons within the Company with a need for the data and while Ameritech has agreed to provide access to this data to competitive providers participating in this proceeding, Ameritech has only done so pursuant to strict non-disclosure agreements that require the return or destruction of the information at Ameritech's request.

Accordingly, based on the additional information provided by Ameritech, it is reasonable to determine that the information that was the subject of the interrogatory should be granted confidential status as it would aid a competitor. However, Ameritech's reply does indicate while it believes that the information that was the subject of the interrogatory should be afforded confidential treatment, it will file revised public versions of its cost studies to comply with the Second Determination. The filings do contain some results of cost models the nature of which have appeared in public documents, publicly available data, and estimates of a subjective nature. The Commission finds no basis for allowing confidential status of this information.

Accordingly it is reasonable to amend the February 13, 2001, order to grant confidentiality to the same type of information granted confidentiality in the Third Determination. It is reasonable to add to the list of information included in the interrogatory, Ameritech specific cost data, and disks that contain operating cost models as types of information that would aid a competitor. It is reasonable to further clarify that the word estimate (information not granted confidential status) means subjective information not revealing the

specifics of Ameritech's operations. The Commission has authority to amend its orders under Wis. Stat. § 196.39.

The February 13, 2001, order (Second Determination) on applications with control numbers 00876, 00877, 00878, 00879, 00883, 01422, 01421, 01420, 01419, 01418, 01417 is amended as follows.

On page three, the first full paragraph shall read:

1. The identification of vendors, information from vendor contracts, Ameritech specific labor rates, Ameritech specific plant indexes, Ameritech specific distance measurements, non-public Ameritech specific usage data and non-public Ameritech specific cost data as well as disk that contain operating cost models are GRANTED confidential status as the applicant has demonstrated that its request is consistent with the criteria for treating information as confidential.

On page three, the paragraph beginning at the bottom of the page shall read:

2. Information contained in documents with PSC control numbers 00876, 00877, 00878, 00879, 00883, 01422, 01421, 01420, 01419, 01418, and 01417 which is not the identification of vendors, information from vendor contracts, Ameritech specific labor rates, Ameritech specific plant indexes, Ameritech specific distance measurements, non-public Ameritech specific usage data, non-public Ameritech specific cost data or disks that contain operating cost models is DENIED confidential status.

This Confidentiality Determination is not a final determination under the Public Records law; it is the Commission's initial decision for purposes of managing its files.

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This Confidentiality Determination does not prejudice the right of any person to submit a public records request to inspect the contents of the filings subject to this determination.

The information for which confidential status was denied shall be open to public scrutiny 40 days after the issuance of this order. Ameritech is directed to provide the Commission with a public version complying with this determination no later than three business day before the public disclosure date. If Ameritech fails to provide such a public version by the required date, the Commission shall provide a public version based on this determination.

The above applicant, upon receipt of this determination, shall serve a copy of this determination on all persons listed on the service list for docket 6720-TI-161 and shall file proof of service with the Commission within three calendar days of service.

Dated at Madison, Wisconsin, _____

For the Commission:

Jeffrey J. Patzke
Administrative Law Judge

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